

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>YVETTE THOMAS</b>	)	
Claimant	)	
VS.	)	
	)	
<b>SUNSHINE BISCUITS, INC.</b>	)	Docket No. 168,058
Respondent	)	
AND	)	
	)	
<b>CRUM &amp; FORSTER INSURANCE COMPANY</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>THE KANSAS WORKERS COMPENSATION FUND</b>	)	

## ORDER

**ON** the 4th day of November, 1993, the application of the respondent and insurance carrier for review by the Workers Compensation Appeals Board of an award entered by Administrative Law Judge Robert H. Foerschler dated October 8, 1993, came on for oral argument by telephone conference.

## APPEARANCES

The claimant appeared by her attorney, David R. Hills, of Kansas City, Kansas. The respondent and insurance carrier appeared by their attorney, Gary R. Terrill, of Overland Park, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Jill S. Galbreath, of Overland Park, Kansas. There were no other appearances.

## RECORD

The record is herein adopted by the Appeals Board as specifically set forth in the award of the Administrative Law Judge.

## STIPULATIONS

The stipulations are herein adopted by the Appeals Board as specifically set forth in the October 8, 1993, award of the Administrative Law Judge.

## ISSUES

- (1) Whether claimant is entitled to five additional days of temporary total compensation.
- (2) What, if any, future medical treatment the claimant is entitled to.
- (3) Whether or not claimant is entitled to unauthorized medical pursuant to the statute.
- (4) The nature and extent of claimant's permanent disability, if any.
- (5) The total award to be made to the claimant, if any.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, and in addition to the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

(1) The Workers Compensation Appeals Board on review of any act, finding, award, decision, ruling or modification of findings or awards of the Administrative Law Judge, shall have the authority to grant or refuse compensation, or to increase or to diminish any award of compensation or to remand any matter to the Administrative Law Judge for further proceedings. 1993 Session Laws of Kansas, Chapter 286, Section 53(b)(1).

(2) The claimant, while working for the respondent, met with personal injury by accident on June 22, 1992, in Wyandotte County Kansas.

(3) Claimant began experiencing pain in her left wrist in February, 1992. She was referred to Dr. William O. Reed, who first attempted conservative care. Conservative care provided only temporary relief. The claimant then returned to Dr. Reed and surgery was performed on June 23, 1992.

(4) Dr. Reed's records indicate claimant returned to work on July 1, 1992, to limited duty. The light-duty was extended an additional two weeks on July 14, 1992. By August 24, 1992, claimant had a normal range of motion and was released from treatment.

(5) Dr. Reed opined in his deposition of September 1, 1993, that the claimant had a five percent (5%) functional impairment to the left hand. Dr. Reed rated the claimant to the hand rather than the forearm because he felt the pathology was limited to the hand.

(6) The claimant was examined on February 2, 1993, by Edward J. Prostic, M.D., an orthopedic surgeon, at the request of claimant's attorney.

Dr. Prostic found the range of motion of the claimant's left wrist to be normal but found tenderness over the dorsum of the lunate bone and opined claimant had a 12.5 percent permanent partial impairment to the left forearm.

(7) Both Dr. Reed and Dr. Prostic testified the healed scar entered the wrist with the doctors disagreeing as to the permanent effect to the claimant into the wrist. The surgical notes marked as a portion of Respondent's Exhibit "A" and placed into evidence in Dr. Reed's deposition clearly state the

ganglion cyst which was removed, protruded through the extensor retinaculum of the wrist with no evidence of the ganglion proceeding deeper into the wrist joint. The transverse incision site was indicated to be over the wrist.

(8) Dr. Reed, in rating claimant at five percent to the hand, opined in his April 28, 1993 letter to Mr. Gary Terrill, that no pathology was treated proximal to the wrist joint. This opinion letter appears to contradict Dr. Reed's operative notes as well as the multiple medical reports marked as Respondent's Exhibit "A" and placed into evidence at Dr. Reed's deposition, all indicating left wrist involvement with the surgical site specifically identified as the left wrist.

(9) The claimant testified at the regular hearing regarding her current problems to the hand and the wrist and alleged continued pain in both the hand and the wrist.

(10) "It is the situs of the resulting disability, not the situs of the trauma which determines the workers compensation benefits available in this state." Bryant v. Excel, 239 Kan. 688, 722 P.2d 579 (1986); Fogle v. Sedgwick County, 235 Kan. 386, 680 P.2d 287 (1987).

(11) In this case the situs of the trauma and the situs of the resulting disability appear to be identical, i.e., the wrist, with supporting evidence from both the claimant's testimony and the medical records of the treating physician.

(12) This Appeals Board finds the injury suffered by the claimant resulted in a permanent impairment to her left wrist. The Appeals Board affirms the Administrative Law Judge's decision that claimant suffered a ten percent impairment to the left forearm based upon the testimony of the claimant at the regular hearing, the testimony of Dr. Edward Prostic, and the medical records of Dr. Reed.

(13) Claimant further alleges an entitlement to additional temporary benefits from and after July 1, 1992. Allegations were made at the regular hearing that claimant had been granted an additional week of temporary total by Dr. Reed.

(14) No mention was made of this additional week during Dr. Reed's deposition, and the only record contained in Dr. Reed's deposition discussing claimant's off-duty status is the July 1, 1992 letter, authored by Dr. Reed, stating that claimant may return to light-duty right away with no use of her left hand. It further indicated a potential return to regular duties within two weeks. No questions were asked of the doctor regarding claimant's allegation of an additional week of off-duty status even though claimant's attorney had full opportunity to clarify the dispute.

(15) With no verification from Dr. Reed regarding the additional temporary total, this court is not persuaded that claimant's testimony is more credible than the medical records of Dr. Reed.

(16) As claimant underwent surgery on June 23, 1992, and returned to work July 1, 1992, claimant would be entitled to one day of temporary total disability at the rate of \$289.00 per week, totalling \$40.46.

(17) The Administrative Law Judge found that neither physician foresaw a need for further medical treatment for the claimant's injury. The Board affirms the Administrative Law Judge's decision and grants future medical benefits only upon application to the Director.

(18) The claimant's average weekly wage at the time of the injury was sufficient to qualify her to receive the weekly maximum benefit of \$289.00.

(19) Unauthorized medical in the amount of \$350.00 was awarded to claimant pursuant to K.S.A. 44-510(c). The Appeals Board affirms the Administrative Law Judge's decision in awarding \$350.00 to the claimant for unauthorized medical.

**WHEREFORE**, it is the finding, decision and order of the Appeals Board that the Award of Administrative Law Judge Robert H. Foerschler dated October 8, 1993, be affirmed in part and reversed in part in that an award of compensation is hereby entered in favor of claimant, Yvette Thomas, and against the respondent, Sunshine Biscuits, Inc., and the insurance carrier, Crum & Forster Insurance Company, for a ten percent impairment to the left forearm. The claimant is entitled to .14 weeks temporary total at the rate of \$289.00 per week, totalling \$40.46. In addition claimant is awarded 19.99 weeks of permanent partial compensation at the rate of \$289.00 per week, totalling \$5,777.11, for a total award of \$5,817.57. As of December 2, 1993, the entire award would be due and owing to the claimant.

Claimant is further awarded unauthorized medical pursuant to K.S.A. 44-510(c) in the amount of \$350.00.

Future medical for this condition is denied.

Fees necessary to defray the expenses of the administration of the Workers Compensation Act are hereby assessed against the respondent and insurance carrier to be paid as follows:

GENE DOLGINOFF ASSOCIATES, LTD.	\$ 273.00
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METROPOLITAN COURT REPORTERS	\$ 408.90
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Per the stipulations entered into by the parties, the Kansas Workers Compensation Fund will reimburse to the respondent 50 percent of any and all compensation, medical expenses, and court costs paid in this claim.

**IT IS SO ORDERED.**

Dated this 3rd day of December, 1993.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

cc: David R. Hills, Evans & Mullinix, 1314 N. 38th, Kansas City, Kansas 66102  
Gary R. Terrill, Wallace, Saunders, et al, P.O. Box 12290, Overland Park, Kansas 66282  
Jill S. Galbreath, Perry, Hamill & Fillmore, P.O. Box 7933, Overland Park, Kansas 66207  
Robert H. Foerschler, Administrative Law Judge  
George Gomez, Director